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**OVERVIEW ON THE NEW KUWAITI COMPANIES
DECREE LAW NO. 25/2012**



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The new Companies Decree Law No. 25 for the year 2012 (the "New Law" or "Law") was published in the Official Gazette on the 29th November 2012 and approved by the Parliament on 23th January 2013.

From a general perspective the New Companies Law is better structured than its predecessor (law No. 15 for the year 1960), consisting of 337 articles distributed over thirteen chapters. Replacing the previous commercial companies law, the Law has incorporated several amendments focusing mostly on the joint stock companies (public and closed), and introduced new concepts which were the Law's most significant changes. It is also evident that the preamble of the Law referred to a huge collection of laws and decrees that were taken into consideration in drafting this new piece of legislation, consequently these specified laws and decrees must in turn comply with the provisions of the New Law.

We will be focusing henceforth on the notable additions and concepts introduced by the new Companies Decree Law No. 25/2012 and on the significant amendments:

Notable additions:

1. Introducing the One-Man company, Professional Partnerships (LLPs) and Non-Profit Corporations:

One-Man Company¹

The New Law recognized the one-man company in article (3) which stipulates that "It is permitted, in the cases foreseen by the law, to establish a company pursuant to the unilateral will of one individual".

Chapter 7 (article 85- article 91) outlines the basic framework that governs the regulations of the one-man company. The Law also determined that such company is closer in nature to the limited liability company.

The main advantage for establishing a One-Man Company is the limited responsibility of the owner for the company's debts and losses to the extent of the company's capital.

Professional Partnerships²

The Law presented the Professional Partnerships being bodies allowing people with the same profession to establish a business entity under a closed joint stock company, limited liability company, general partnership or limited partnership. Such company must have two or more professionals of the same profession. Division 6 (article 80 - article 84) of the Law outlines the basic framework of the professional partnership entity including the procedures of its establishment. According to the New Law, the professional partnership is subjected to the terms and provisions of the company's form under which such entity is established providing that those terms are not in conflict with provisions of division 6 of the Law. Partners in professional partnerships do not acquire the status of a trader.

Non-Profit Corporations

The New Law acknowledged the establishment of non-profit corporations in a single clause (article 3). Article 3 referred the matters of establishing and regulating the provisions of non-profit corporations to the executive

¹ A business entity established by solely one person without partners. Such company acquires a legal personality and a patrimony separate from that of its owner.

² Business entity formed by two or more professionals such as accountants, doctors, or lawyers, who provide professional services to the public.

<http://www.businessdictionary.com/definition/professional-partnership.html>

bylaw³, however pursuant to the said article a non-profit entity could be structured in any form stated in article 4 providing that the structure is suitable to the nature of the non-profit corporation under incorporation.

2. Implementation of the Shareholders' Agreement⁴:

Shareholders' agreement is outlined in article 30 of the Law which provides that a shareholders' agreement may be agreed on between partners, incorporators or shareholders prior or subsequent to the establishment of the company. By introducing this type of agreements, the legislator has recognized the validity and legitimacy of contracts arranged amongst the partners to organize their personal relationships. Partners tend and usually prefer to have recourse to such agreements to keep their arrangements private and confidential whereas the provisions stated in the articles and memorandum of association must be made available to the public pursuant to the New Law.

It is herein essential to mention that shareholders' agreement cannot contradict the peremptory norms of the Law.

3. Promoting the role of electronic means of communicating:

Since the electronic communications is presently dominating the business sector, the New Law gave considerable attention to it by regulating several major aspects:

Enacting electronic subscription in joint stock companies

According to article 131 of the Law, subscription to shares in public joint stock companies may be submitted through electronic methods. Article 131 outlined the major guidelines of the electronic subscription stating that the proper implementation of such subscription will require arrangement and organization with banks and clearing agencies. Electronic subscription applies also to bonds and sukuks pursuant to article 182.

Activating the role of companies' websites

The role of the companies' websites (if any) has been preliminary highlighted in article 1 of the Law which stipulates that notices are considered legally valid if posted in two local daily newspapers published in Arabic language and on the company's website if any. Particular instances foreseen by the Law requiring serving notice are the announcement of the articles of association of the joint stock company (article 126), announcement of the decrease of the company's capital in the absence of full subscription to the shares (article 136), announcement of the revocation of company's establishment (article 137).

The Law stresses in article 31 on "the provision of a copy of the company's articles of association on the company's website"; and article 132 also requires "the provision of a typed copy of the company's articles of association on the website of the company under formation so that every subscriber can get copy of it". Uploading a copy of the company's articles of association on the company's website and/or serving notice through such website support the new vision and concerns of the legislator to promote the transparency concept in the companies' performance and facilitating third parties' access to the companies' main provisions which is considered essential and reassuring to those who wish to deal with the company.

Calling for shareholders' meeting via modern communication methods

Article 142 of the Law stipulates that it is permitted to call for the constituent assembly in joint stock companies through any of the modern communication methods; while article 221 provides that a board's meeting can be held via modern means of communication. It is also stipulated that the proceedings related to calling for the

³ The Executive bylaw of the new Companies Decree Law 25/2012 which will be issued by the Minister of Commerce and Industry.

⁴ Contract between the owners (shareholders) of a firm, defining their mutual obligations, privileges, protections, and rights supplement (or superseding) the constitutional documents.
<http://www.businessdictionary.com/definition/shareholders-agreement.html>

constituent assembly's apply as well as to the call for ordinary general meetings (article 237) and extraordinary general meetings (article 246).

The New Law stated that such modern communication methods will be determined by the executive bylaw.

4. Adoption of Underwriter⁵ concept in joint stock companies:

Underwriter concept was introduced in article 135 of the New Law. The said article defined the role of the underwriter being committed to purchasing the shares which were not subscribed to by the public during the establishment of the company or a capital increase. The Law referred the matter of the related regulating provisions to the executive bylaw.

According to article 182 of the Law, the role of an underwriter extends as well to bonds and sukuku.

5. Privileged shares issued for increasing the capital of joint-stock companies:

Article 164 of the New Law provides that shares with privileges are allowed to be issued in the capital increase of a joint-stock company providing that the option of granting such privileges is identified in the company's articles of association and that the resolution of granting the privileges indicates it explicitly. Such decision shall be passed by an extraordinary general meeting of the company.

6. Introduction of provisions related to Sharia' compliant companies:

It is noticeable that the legislator adopted a general perspective in drafting the New Law aiming at setting comprehensive regulations that governs all types of companies; therefore it included special provisions related to Sharia' compliant companies in article 15 which outlines the basic framework and regulating terms of such companies.

7. Issuance of sukuku in joint stock companies:

The New Law allowed joint stock companies to borrow from the public by issuing negotiable sukuku under arrangements that complies with principles of the Islamic Sharia (article 178 and following). The Law combined the provisions of bonds and those of sukuku taking into consideration the necessary modifications which corresponds to the special nature of such Islamic instruments.

It is also noticeable that provisions concerning bonds in the New Law are more comprehensive in comparison with the previous commercial companies law.

8. Introducing the system of cumulative voting in the election of board of directors members:

Article 240 of the New Law stipulated the system of cumulative voting to elect members of board of directors in joint-stock companies. The cumulative voting grants each shareholder the capacity to vote pursuant to the number of shares. The shareholder is entitled to use all of his shares to vote for one candidate or distribute them among the board candidates.

9. Inclusion of corporate governance concept:

Corporate governance concept is a set of laws, regulations and decisions that governs the relations between the main parties affecting the performance of the company. Corporate governance principles aim to achieve excellence in the management of the company by choosing the appropriate and effective methods to attain the company's objectives and plans. Corporate governance focuses mainly on relations between staff, board

⁵ An intermediary (a financial institution) between the issuing company and the investors guaranteeing or insuring to the company that its shares, when they are offered to the public, will be subscribed in full.

members, shareholders, stakeholders and government departments. It also focuses on the interaction between all these parties in controlling and inspecting the company's operations.

The New Law clearly introduces the concept of corporate governance in articles 217 and 218 demanding the companies to abide by its principles; the Law also referred to the rules of the corporate governance which are currently under preparation by the Capital Markets Authority ("CMA"). The CMA is working on drafting the rules in line with the new economic trend followed worldwide and in the State of Kuwait aiming to enrich the level of corporate administration, improve its performance and ability to overcome the financial crisis and promote transparency. Achieving the previous objectives will benefit and stabilize the national economy in particular and the financial sector in general.

10. Procedures of execution against shares or portions:

The new Companies Law enabled creditors to execute against the shares or portion of their debtors in order to recover their debt whether the debtor was a partner/shareholder in a general partnership (article 43), limited partnership (article 57), private company limited by shares (article 62) or limited liability company (article 102). The New Law, unlike its predecessor, detailed the procedures to be followed for seizing and selling shares while the previous law remained silent over this point referring solely to the possibility of seizure of shares without executing against them.

11. Introduction of a Penalties chapter:

The New Law assigned chapter 13 (article 334 - article 337) to list the penalties applicable to the violations of the Law. The penalties have been divided into three categories and the Law outlined the acts and persons subjected to each category.

12. Adoption of One-Stop-Shop⁶ concept for establishing companies:

The New Law enacted the One-Stop-Shop to facilitate the procedures of establishing commercial entities. The objective of a One-Stop-Shop is assigning the process of establishing companies to a specific department at the Ministry of Commerce and Industry comprising representatives of the concerned government agencies to ensure the rapid of the companies' establishment and licensing procedures.

Significant amendments:

1. Accelerated process for the valuation of in-kind contributions:

In-kind contributions are main components of the company's share capital; the nature of these contributions requires an accurate assessment of the contributed properties' value enabling a proper estimation of the company's capital. The valuation of the in-kind contributions is of high importance due to its impact on the establishment of a company or a capital increase which consequently affect the rights of partners or shareholders. Although complex and extended measures concerning the valuation of these contributions were provided in the previous law, however article 11 of the Law adopted an accelerated process enabling such valuation through an auditing firm certified by the CMA. Article 11 also referred the matter of regulating procedures to the executive bylaw.

⁶ Self-contained office or outlet that provides (almost) everything needed to satisfy a customer order or request, complete a process (such as establishing companies), or fulfill a requirement (such as information).
<http://www.businessdictionary.com/definition/one-stop-shop.html>

2. Nationality of partners in general and limited partnerships:

Pursuant to the New Law partners of a general partnerships must be Kuwaitis citizens (article 34) while the previous law stated that a general partnership must have at minimum one partner of Kuwaiti nationality providing that the Kuwaiti participation in the share capital is not less than 51 percent.

As a result to such amendment, it is mandatory that general partners of a limited partnership are holders of Kuwaiti nationality (article 56).

As with regard to the private company limited by shares, the New Law remained silent on the above issue but analogically speaking and since article 61 of the Law submitted such company to the provisions of the limited partnerships therefore all general partners in a private company limited by shares shall also be Kuwaitis.

3. Amendments related to Limited Liability Company:

According to the New Law a limited liability company is allowed to be constituted of 50 partners; additionally the managerial structure of the company has been amended acknowledging the existence of partners' ordinary general meeting and extraordinary general meeting.

4. Establishing a public joint stock company by a ministerial decree:

Pursuant to article 123 of the Law, an approval for the establishment of a public joint stock company is obtained through a decision issued by the Minister of Commerce. Article (123) also comprises the recourses of appeal in the event that the application for the company's incorporation was refused and the time limits for such appeals.

5. Waiver of the priority subscription right with regard to capital increase shares:

Shareholders in public joint stock companies are entitled to waive the right of priority to subscribe to capital increase shares according to article 160 of the New Law providing that such capital increase is concluded through public subscription and that the company's articles of association permits shareholders to waive their right. The shareholders can waive their priority right to other shareholder or a third party with or without compensation. The New Law referred the matter of regulating procedures to the executive bylaw.

6. Foremost amendments to the administration bodies of joint stock companies:

Number of board's members

According to article 212 of the New Law, the board of directors in joint stock companies shall at least be constituted of five members while the number requested in the previous law was three.

Segregation of the chief executive officer from the board of directors

Article 214 of the New Law stipulates that a Chief Executive officer of the joint stock company who is in charge of its daily administration is prohibited from holding a membership in company's board of directors.

Cancellation of security shares for members of the board

Allocating security shares for members of board of directors is no longer a condition obligatory to elect/appoint a board member as it was required in the previous law.

Authorized directorship in several companies

According to article 225 of the New Law, a director is eligible to become a member in the board of directors of five different Kuwaiti shareholding companies instead of three as per the previous law; however a director can be elected as chairman of only one Kuwaiti shareholding company instead of three.

Duration of prohibition on shares of incorporation

Article 171 of the New Law reduced the duration of prohibition on shares of incorporation to two years from the date of the company’s incorporation.

7. Amendments related to holding company:

The New Law assigned chapter 11 (article 274 – article 280) to display the provisions of the holding company.

Major amendments affecting holding companies:

The Law expanded the specified activities of the holding companies allowing the investment in shares or portions or investment units in Kuwaiti or foreign companies or funds (article 274) while pursuant to the previous law the activities of holding companies was limited to acquiring shares or portions in two forms of companies a joint stock companies and a limited liability, Kuwaiti and foreign.

The New Law stipulates that holding companies may take the form of a closed joint stock company, limited liability company and a one-man company while the previous law narrowed it to a single form a closed joint stock company. The Law also provides that holding companies shall be subjected to the provisions of the company’s form under which it is established.

Furthermore, holding companies are liable for the obligations of its subsidiaries jointly under specific circumstances as stated in article 280 of the Law.

8. Prolonged provisions for companies’ control and inspection:

The previous commercial companies law referred to the subject of companies’ control and inspection in a single article (article 178) restricting it to joint stock companies, while the New Law assigned a division in chapter 13 (article 327 – article 333) to regulate that substance and display its provisions. It is noticeable that the New Law gave the matter of control and inspection a general aspect by stipulating that it applies to all types of companies and granting shareholders or partners who own 5% of the company’s capital the right to demand the performance of such control and inspection instead of limiting it to the Ministry of Commerce and Industry as per the previous law.

9. Accumulation of the provisions related to companies’ dissolution and liquidation:

According to the previous law, relevant provisions were displayed at the end of the chapter regulating each form of company. The New Law accumulated the dissolution and liquidation provisions in one section being division 4 of chapter 13 (article 297- article 326) facilitating therefore the revision of such terms.

10. Provisions on transformation, merger and division of companies:

The New Law assigned chapter 12 to regulate the provisions of the transformation and merger of companies with supplementary and extended details in comparison with the previous commercial companies law. Chapter 12 also introduced provisions related to the division of companies outlining major characteristics and referring the matter of regulating procedures to the executive bylaw.





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